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No. 01-0166

In the Supreme Court of the United States

AFSCME, Council #15, Local 1159, AFL-CIO,
Petitioner,

v.

Bridgeport Guardians, Inc.;
City of Bridgeport,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether the district court's Order of March 24, 2000 was a consent decree which improperly disposed of Union claims and if not, whether the burdens imposed on petitioner Union were minor and ancillary.

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REPLY TO BRIEF IN OPPOSITION

Petitioner labor union submits the following brief in reply to certain new points raised in the brief in opposition of Respondent Bridgeport Guardians. Petitioner Union will attempt to address each point in the order in which such appears in Respondent's brief.

REPLY TO RESPONDENT'S STATEMENT OF THE CASE

A. Guardians v. Delmonte: The 1982 Court Order

Respondent would offer the voluminous post judgment docket entries in this case as evidence of ongoing racism at the Bridgeport Police Department. These entries, however, are indicative of nothing more than the "continued flow of complaints" to the Special Master which, regardless of merit, the district court found "indicative of something wrong". See Pet. App. 39a.

Respondent cites six (6) cases in support of its claim that the Bridgeport Police Department is frequently sued for racial discrimination. Four (4) of these cases, however, involved "disparate impact" challenges to written promotional exams administered by the City's personnel director. Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission, 354 F.Supp. 778 (D. Conn. 1973), aff'd, in part, 482 F.d 1333 (2d Cir. 1973); Members of Bridgeport Housing Authority Police Force v. City of Bridgeport, 449 F.Supp. 760 (D. Conn. 1980), aff'd in part and rev'd in part, 646 F.2d 55 (2d Cir. 1981); Brown v. Bridgeport Civil Service Commission, B86-282 (D. Conn. 1986); Bridgeport Guardians v. City of Bridgeport, 735 F. Supp. 1126 (D.

Conn. 1990), 933 F.2d 1140 (1991); cert denied, 502 U.S. 924, (1991). As regards the remaining two (2) cases cited, Dobsz v. Delmonte, 553 F.Supp. 601 (D. Conn 1982) did not involve a racial discrimination claim and Bridgeport Guardians v. Delmonte, 553 F.Supp. 601 (D. Conn. 1982) is the underlying decision in the instant case.

B. Decisions of the Special Master

Respondent Guardians repeatedly claim (Guardian's brief at pp. 7-8, 15-17, 23, 37-38) that the Union cannot object to the changes imposed on the collective bargaining agreement by the Stipulation because the Union failed to appeal in 1990 when the district court overruled the Union's objection to a certain recommended ruling by the Special Master. This claim is wholly without merit because the Union never attained party status (limited or otherwise) at that time and as such the Union had no standing to appeal. The Guardians routinely oppose motions to intervene and are well aware that the Union could not appeal in 1990. The 1990 proceedings merit scrutiny, however, because those proceedings are generally illustrative of the unique nature of the "Special Master" proceedings in this case.

On April 3, 1990 the Special Master held an evidentiary hearing concerning an incident in which a supervisor made alleged racial slurs[1] concerning a minority female. The Special Master ordered the City to "secure the attendance" of five (5) supervisors and advised each of his "right to be represented by counsel". One supervisor was

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[1] The substance of these alleged slurs is unknown as the Special Master states only that they were "at least covertly racial in nature".

represented and the remainder appeared pro se. After the hearing, the Special Master issued a Recommended Ruling imposing certain discipline on three (3) of the supervisors.

Although neither the Union nor any of the supervisors were parties to the action, the Union filed an "objection" with the district court contesting the direct imposition of discipline without notice to the supervisors of the charges against them and in contravention of the Union's right to challenge the "just cause" basis of discipline at arbitration pursuant to the collective bargaining agreement. The district court overruled the objection and adopted the Recommend Ruling imposing the discipline.

The Union was not a party and had no reasonable opportunity to intervene in time to attain party status for purposes of its objection. In addition, the Special Master was (again) adjudicating a wholly new Title VII claim that arose after issuance of the judgment in this case in 1982. Furthermore, this all occurred prior to the issuance of Tomka v. Seiler Corp., 66 F.3d 1295 (2d. Cir. 1995) (holding that individuals with supervisory control may not be personally held liable under Title VII). This was the first time the Union had become aware that the Special Master had issued a Recommend Ruling which conflicted with rights protected by the collective bargaining agreement.

Even if, however, the Union was a party and had the right to appeal, declining that right at that time would not preclude the instant appeal. The Union is not contesting the discipline imposed on certain members in 1990 but rather an Order which broadly conflicts with the collective bargaining agreement and deprives the Union the opportunity, indefinitely, to negotiate concerning a mandatory topic of collective bargaining. The Union's concern regarding the

duration of the Special Master's tenure is intimately connected to the Union's concern regarding the 1983 Remedy Order's broad referral of unrelated future discrimination claims to the Special Master. It is in the interest of the Union and its membership for a variety of reasons[2] that these post judgment proceedings come to an end at some point in time.

The broad referral of authority set forth in the 1983 Remedy Order gave rise to a potential for never-ending proceedings before the Special Master. This potential became a hard reality on April 28, 1999 when the district court revealed that its concern was "the continued flow of complaints" to the Special Master regardless of whether "the complaints are eventually held to have merit". This statement gave new meaning to the old adage "anyone can sue" because it placed all parties on clear notice that the Guardians need only continue filing complaints to preserve the "Special Master" system and guarantee their status as a rival labor organization.

C. The Stipulation and the Court's Order

Respondent Guardians claim that the district court's entry of the Stipulation as a court order was based on a record of "seventeen years of findings of discrimination."

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[2] The Union has an interest in negotiating and enforcing the collective bargaining agreement. The Union has an interest in maintaining its status as the exclusive collective bargaining representative. The Union has an interest in having disputes resolved through the grievance arbitration procedure. The Union has an interest in preserving its collectively bargained right to challenge the just cause basis of discipline imposed by the City or its agents.

Respondent's brief at p. 8. The Second Circuit's opinion, however, notes that the district judge "did not explicitly base her remedy order on a new finding of current discrimination." Pet. App. at 14a.

The Stipulation which is the subject of this petition was entered into for the sole purpose of settling a dispute between Respondent Guardians and Respondent City concerning the Special Master's findings in the Joe Ann Simmons matter. The district court had held the City in contempt because the Police Commission made factual findings which conflicted with the Special Master's finding in that matter and the City responded with appeals to the Second Circuit challenging both the contempt ruling and the Special Master's authority to adjudicate wholly new Title VII claims.

RESPONDENT'S REASONS FOR DENYING THE WRIT

A. The Court of Appeals Affirmed the District Court's Order

Respondent Guardians would have this Court believe the record reflects seventeen (17) years of post judgment racial discrimination with the Bridgeport Police Department which justifies the district court's action. In fact, the record reflects seventeen (17) years of post judgment litigation before the Special Master in which the Guardians prevailed in fourteen (14) cases and the City prevailed in ten (10) cases. Pet. App. 54a. The Second Circuit, however, did not base its affirmance of the district court's Order on any finding of racial discrimination but rather the Police Commission's

backlog[3] of pending discipline cases and the Commission's failure to file reports[4] acceptable to the Special Master. Pet. App. 13a-15a.

Petitioner Union has always acknowledged that under Firefighters v. Cleveland, 478 U.S. 501, 528 (1986) it could not block the decree merely by withholding consent. The Union does, however, rely on this Court's holding in that case that a consent decree may not "dispose of the claims of a third party, and a fortiori may not impose duties or obligations on a third party, without that third party's agreement". Id. 478 U.S. at 529. Respondent Guardians would summarily dismiss the Union's claims on the grounds that such claims arise under state law and must "yield" to Title VII. Guardian's brief at pp. 17-18.

The Order and Stipulation at issue directly impact Petitioner Union's ability to negotiate and enforce agreements concerning employee discipline for the indefinite future. This violates not only this Court's holding in Firefighters v. Cleveland, supra regarding disposal of third party rights, but also this Court's holding in W.R. Grace v. Rubber Workers, 461 U.S. 757, 771-772 (1983) concerning settlements of an employer's Title VII liability which are paid for with union contractual rights, as well as this Court's recently expressed "caution against interference with labor-management agreements about employee discipline" in Eastern Associated Coal Corp. v. United Mine Workers, _U.S_, 121 S.Ct. 462,

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[3] The case backlog elimination requirement appears to be the Special Master's 1991 "expectation" that discipline cases will not pend for more than three (3) months. Pet. App. at 91a.

[4] The Master's extensive reporting requirements were ordered in 1990. Pet. App. at 104a-105a.

468 (2000).

Respondent Guardians' contentions regarding the merits of the changes to the disciplinary process imposed through the Stipulation belie the Guardians' status as a rival labor organization. The Guardians still retain the ability to challenge discipline by complaint to the Special Master under Paragraph 10(b) of the 1983 Remedy Order. Pet. App. 47a; 120a-121a. If, as the Union contends, challenges under the collective bargaining agreement are rendered meaningless because arbitrators are unwilling to reverse or to modify discipline decisions by court-appointed Hearing Officers, then the Union has lost its status as exclusive representative as to this mandatory topic of collective bargaining.

The Union has not "abdicated its representation of minority officers". Guardians brief at p. 22. As the Guardians know full well, the collective bargaining agreement has long contained an express prohibition against discrimination "because of age, sex, handicap, marital status, race, color, creed, national origin, political affiliation or union membership". There is nothing in this lengthy record to establish that the Petitioner Union has discriminated against minorities or refused to enforce any provision of the collective bargaining agreement, including the nondiscrimination provision, on behalf of minorities. The Union's position as to the merits of the changes imposed by the Stipulation is based on its years of experience bringing "just cause" challenges to discipline.

B. This Case Creates a Significant Issue for this Court

This case involves changes of indefinite duration to a municipal employer's disciplinary procedure which were

negotiated between an employer and a minority employee organization and implemented through a consent decree over the objection of the labor organization designated to act as the exclusive collective bargaining representative. The changes were negotiated to settle a dispute between the municipal employer and the minority organization concerning the continuing jurisdiction of a Special Master to adjudicate wholly new Title VII claims seventeen (17) years after the district court's order of referral. The changes were justified by the district court and the court of appeals in the absence of any current violation of federal law and solely on the basis of the failure of a municipal board composed of citizen/volunteers to meet the Master's administrative requirements. The substantial impact of these changes on an innocent intervener merit this Court's review. Absent such review, the decision by the court of appeals will serve as licence for employers and minority organizations elsewhere to negotiate agreements in derogation of collectively bargained rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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